

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
Region 21

SOUTHERN CALIFORNIA UNITED FOOD
& COMMERCIAL WORKERS UNIONS AND
FOOD EMPLOYERS PENSION TRUST FUND¹

Employer

and

Case 21-RC-20899

UNITED FOOD & COMMERCIAL WORKERS
INTERNATIONAL UNION, LOCAL 324²

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board. Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding,³ the undersigned makes the following findings and conclusions.

1. The rulings by the hearing officer are free from prejudicial error and are hereby affirmed.

¹ The name of the Employer appears as corrected at the hearing.

² The name of the Petitioner appears as amended at the hearing.

2. The record reveals that the Employer, Southern California United Food & Commercial Workers Union and Food Employers Pension Trust Fund, a Joint Trust established under LMRA Section 302(c)(5), with its principal facility located at 6425 Katella Avenue, Cypress, California, and twelve satellite facilities located at 2001 Camino Del Rio South, San Diego, California; 8530 Stanton Avenue, Buena Park, California; 23681 Birtcher, Suite 1, Lake Forest, California; 630 Shatto Place, Los Angeles, California; 25949 Belle Porte Avenue, Harbor City, California; 816 Camarillo Springs Road, Suite H, Camarillo, California; 900 Airport Drive, Bakersfield, California; 127 Bridge Street, Arroyo Grande, California; 855 West San Bernardino Avenue, Bloomington, California; 705 West Arrow Highway, Claremont, California; 550 Continental Boulevard, Suite 130, El Segundo, California; and 43535 17th Street West, Suite 402, Lancaster, California, is engaged in the business of providing trust-fund services.

During the 12-month period ending March 31, 2006, a representative period, in conducting its business operations described above, the Employer purchased and received at its Cypress, California facility goods valued in excess of \$50,000 directly from points outside the state of California.

Based on the above, and the record as a whole, I find that the Employer is engaged in commerce within the meaning of the Act and that it will effectuate the purposes of the Act to assert jurisdiction herein.

³ Under an Order dated June 15, 2006, the record was reopened on June 26, 2006, as the Employer had not designated counsel and was not prepared to proceed when the record opened on June 5, 2006. At the time

3. The record reveals that the Petitioner, United Food & Commercial Workers International Union, Local 324, is an organization in which employees participate and which exists, in whole or in part, for the purpose of representing employees with respect to their wages, hours, and working conditions.

Based on the above, and the record as a whole, I find that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act.

4. The Petitioner claims to represent certain employees of the Employer.

5. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

6. The Petitioner seeks to represent the following unit:

All full-time and regular part-time employees employed by the Employer at its facility located at 6425 Katella Avenue, Cypress, California, and at its satellite facilities located at 2001 Camino Del Rio South, San Diego, California; 8530 Stanton Avenue, Buena Park, California; 23681 Birtcher, Suite 1, Lake Forest, California; 630 Shatto Place, Los Angeles, California; 25949 Belle Porte, Harbor City, California; 816 Camarillo Springs Road, Suite H, Camarillo, California; 900 Airport Drive, Bakersfield, California; 127 Bridge Street, Arroyo Grande, California; 855 West San Bernardino Avenue, Bloomington, California; 705 West Arrow Highway, Claremont, California; 550 Continental Boulevard, Suite 130, El Segundo, California; and 43535 17th Street West, Suite 402, Lancaster, California; excluding all other employees, managerial employees, guards, and supervisors as defined in the Act.

No issues were presented at the hearing regarding the unit. I find that the unit is appropriate for the purposes of collective bargaining.

There are approximately 180 employees in the unit found appropriate.

the record was reopened, the Employer still had not designated counsel to represent it.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the Notice of Election to be issued subsequently, subject to the Board's Rules and Regulations.

Eligible to vote are those in the unit who are employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike, which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective-bargaining purposes by the **United Food & Commercial Workers International Union, Local 324.**

LIST OF VOTERS

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Company, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within 7 days of the date of this Decision, two copies of an alphabetized election eligibility list containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned, who shall make the list available to all parties to the election. North Macon Health Care Facility, 315 NLRB 359 (1994).

In order to be timely filed, such list must be received in Region 21, 888 South Figueroa Street, 9th Floor, Los Angeles, California 90017, **on or before July 10, 2006**. No extension of time to file the list shall be granted, excepted in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission to (213)894-2778. Since the list is to be made available to all parties to the election, please furnish a total of 4 copies, unless the list is submitted by facsimile, in which case only one copy need be submitted.

NOTICE OF POSTING OBLIGATIONS

According to Board Rules and Regulations, Section 103.21, Notices of Election must be posted in areas conspicuous to potential voters for a minimum of three (3) working days prior to the day of the election. Failure to follow the posting requirement may result in additional litigation should proper objections to the election be filed. Section 103.20(c) of the Board's Rules and Regulations requires an employer to notify the Board at least five (5) full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. Club Demonstration Services, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

RIGHT TO REQUEST REVIEW

Under the provision of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570. The Board in Washington must receive this request by **5 p.m., EST, on July 17, 2006**. This request may **not** be filed by facsimile.

In the Regional Office's initial correspondence, the parties were advised that the National Labor Relations Board has expanded the list of permissible documents that may be electronically filed with its offices. If a party wishes to file the above-described document electronically, please refer to the Attachment supplied with the Regional Office's initial correspondence for guidance in doing so. The guidance can also be found under "E-Gov" on the National Labor Relations Board website: **www.nlr.gov**.

DATED at Los Angeles, California, this 3rd day of July, 2006.

/s/[James F. Small]
James F. Small
Acting Regional Director, Region 21
National Labor Relations Board

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SOUTHERN CALIFORNIA UNITED FOOD & COMMERCIAL
WORKERS UNIONS AND FOOD EMPLOYERS PENSION TRUST
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UNITED FOOD & COMMERCIAL WORKERS INTERNATIONAL
UNION, LOCAL 324

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DATE OF MAILING July 3, 2006

AFFIDAVIT OF SERVICE OF **DECISION AND DIRECTION OF ELECTION**

I, the undersigned employee of the National Labor Relations Board, being duly sworn, depose and say that on the date indicated above I served the above-entitled document(s) by regular mail upon the following persons, addressed to them at the following addresses:

So. Cal. UFCW Unions & Food Employers
Joint Trust Fund
6425 Katella Avenue
Cypress, CA 90630-5238

Joseph L. Paller, Attorney at Law
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6100 Wilshire Boulevard, Suite 700
Los Angeles, CA 90048-5114

Stacy D. Shartin, Attorney at Law
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John M. Grant, In- House Counsel
United Food and Commercial Workers
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630 Shatto Place
Los Angeles, CA 90005

Rick Eiden, Executive Vice President
United Food & Commercial Workers International Union
Locals 135, 324, 770, 1036, 1167,
1428 and 1442
8530 Stanton Avenue
Buena Park, CA 90622

Reporter: Argie Reporting Company

**Subscribed and sworn to before me this 3rd day
of July, 2006.**

**DESIGNATED AGENT
NATIONAL LABOR RELATIONS BOARD**

